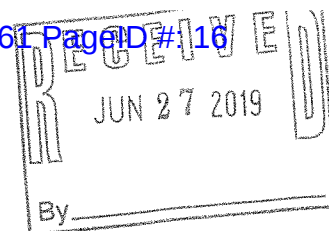


# EXHIBIT “A”



# AIA Document A401™ – 2017



## Standard Form of Agreement Between Contractor and Subcontractor

**AGREEMENT** #19001-CN-011 made as of the 18th day of June in the year 2019

*(In words, indicate day, month and year.)*

**BETWEEN** the Contractor:

*(Name, legal status, address and other information)*

Dobco, Inc.  
1 Geoffrey Way  
Wayne, NJ, 07470

and the Subcontractor:

*(Name, legal status, address and other information)*

Ralph G. Degli Obizzi & Sons, Inc  
400 Robinson Lane  
Wilmington, DE 19805

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: February 27, 2019

with the Owner:

*(Name, legal status, address and other information)*

US Army Engineer District, Philadelphia  
Wanamaker Building, 100 Penn Square East  
Philadelphia, PA 19107-3390

for the following Project:

*(Name, location and detailed description)*

Welch Elementary School / Dover Air Base Middle School Replacement  
Dover Air Force Base, Dover, Delaware 19902

The Architect for the Project:

*(Name, legal status, address and other information)*

Zyscovich Architects  
100 North Biscayne Blvd., 27<sup>th</sup> Floor  
Miami, FL 33132-2304

The Contractor and the Subcontractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference.

RECEIVED

JUN 20 2019

RALPH G. DEGLIOBIZZI & SONS, INC.  
MECHANICAL CONTRACTORS

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## ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor (from which the compensation amounts may be deleted) and the other Contract Documents enumerated therein; (3) Modifications to the Prime Contract, whether issued before or after the execution of this Agreement; (4) other documents listed in Article 15 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.

§ 1.2 The Subcontract Documents form the Subcontract for Construction. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications to the Prime Contract or Modifications to this Subcontract issued subsequent to the execution of this Agreement, appears in Article 15. In the event of a conflict between a term or condition contained in the Subcontract Documents, the provision imposing the higher standard or greater duty on the Subcontractor shall govern.

§ 1.3 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the General Conditions of the Prime Contract.

§ 1.4 The Subcontract may be amended or modified only by a Modification to this Subcontract. A Modification to this Subcontract is a written amendment to this Agreement signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 5.

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§ 1.5 The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.6 Subcontractor shall be furnished copies of the Subcontract Documents prior to execution of this Agreement, and thereafter, upon request. The Contractor may charge the Subcontractor for the reasonable cost to reproduce the Subcontract Documents provided to the Subcontractor. The Subcontractor, by signing this Agreement, acknowledges receiving, reviewing and studying the Subcontract Documents prior to the execution of this Agreement.

§ 1.7 Execution of the Subcontract by the Subcontractor is a representation that the Subcontract Documents enable the Subcontractor to fulfill all of its obligations hereunder, including, but not limited to, completing the Work within the Subcontract Time and for the Subcontract Sum. The Subcontractor fully acknowledges that it has had sufficient opportunity to investigate the Project site and is fully familiar with all of the conditions existing at the site.

## ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

§ 2.1 The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of the General Conditions to the Prime Contract apply to this Agreement pursuant to Section 1.3 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

§ 2.2 This Subcontract and the obligations of the Contractor and Subcontractor are subject to and conditioned upon the execution of the Prime Contract by the Owner and the Contractor, and if for any reason the Prime Contract is not executed by the Owner or the Contractor, this Subcontract shall be of no force and effect and the Subcontractor and Contractor shall have no obligation to the other.

§ 2.3 The Contractor may require the Subcontractor to enter into agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of this Agreement. Without limiting the application of the foregoing, the provisions of the Prime Contract are specifically incorporated herein.

## ARTICLE 3 CONTRACTOR

*(Paragraph deleted)*

### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number.

§ 3.1.2 The Contractor will exercise its best efforts to render decisions in a timely manner and in accordance with the Contractor's construction schedule.

### § 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor will exercise its best efforts to cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall to the best of its ability review, and expedite written responses to, submittals made by the Subcontractor in accordance with Section 4.2.3 and Article 5. As soon as practical after execution of this Agreement, the Contractor shall make available to the Subcontractor with copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. Subsequent changes in the construction and submittal schedules and additional scheduling details shall be made

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available to the Subcontractor. Subcontractor represents that it has either reviewed the schedules or is expressly waiving its rights to do so.

**§ 3.2.2** The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work, provided the site conditions and logistics are available. Subcontractor shall assume full responsibility for risk of loss, and shall be solely responsible for protection and security with respect to same.

*(Paragraph deleted)*

### **§ 3.3 Communications**

**§ 3.3.1** The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

**§ 3.3.2** The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor. The Subcontractor, Sub-subcontractors, and their respective employees shall not communicate directly with the Owner, Owner's representatives or Design Team Members without written authorization from the Contractor.

**§ 3.3.3** The Contractor does not permit the Subcontractor to request (and the Subcontractor shall not request) information directly from the Architect regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor. Such request must be submitted by the Subcontractor to the Contractor in writing.

**§ 3.3.4** If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Contractor shall, prior to delivery to the Project site or exposure of the Subcontractor's employees to such material or substance, give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

*(Paragraphs deleted)*

### **§ 3.4 Claims by the Contractor**

**§ 3.4.1** Liquidated damages, if provided for in the Prime Contract or otherwise, shall be assessed by the Contractor in good faith and in its sole and absolute discretion against the Subcontractor only to the extent caused by or relating to Work performed by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable. If Subcontractor was not exclusively responsible for causing the delay which resulting in Contractor being assessed liquidated damages, then Contractor shall assess against Subcontractor only Subcontract's proportionate share of such damages, based upon the percent of total delay caused by Subcontractor, as determined by the Contractor in good faith and in its sole and absolute discretion.

Time is of the essence to all of the Subcontractor's obligations under the Contract Documents. The Subcontractor acknowledges, recognizes and agrees that if the actions or inactions of the Subcontractor or any lower tiered sub-subcontractor, for which the Subcontractor is responsible, causes the substantial completion of the Project or the performance of Work to be delayed, the Contractor will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Contractor and Subcontractor agree:

That if Subcontractor's failure to perform as required by the Subcontract causes, whether in whole or in part, the Contractor to fail to meet a milestone date or the Substantial Completion date, and/or if the Owner asserts a claim for delay or extra costs which the Contractor believes are attributable to the Subcontractor's failure to perform, the Contractor shall be entitled to retain or recover from the Subcontractor, as liquidated damages and not as a penalty, the sum of Two Thousand Dollars and Zero Cents (\$2,000.00), each calendar day, commencing on the date of the milestone date or Substantial Completion date, as appropriate.

The foregoing does not limit the amount of damages to which the Contractor may be entitled as a result of any other failure on the part of the Subcontractor to perform or complete the Work in accordance with the Subcontract Documents. Liquidated damages are intended only to cover damages suffered by Contractor as a result of delay in

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obtaining milestones and/or Substantial Completion and shall not be deemed to include any other damages, including costs incurred by Contractor to complete the Work, consequential damages, or damages resulting from defective Work.

*(Paragraphs deleted)*

### **§ 3.5 Contractor's Remedies**

**§ 3.5.1** If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three business days after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, as determined in the sole discretion of the Contractor, the Contractor may, without prejudice to other remedies the Contractor may have, including without limitation the Contractor's right to terminate this Subcontract pursuant to Section 7 hereof, order the Subcontractor to provide overtime or similar measures at Subcontractor's sole cost to make up schedule delays, or immediately make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor, including without limitation, reasonable attorney fees and any home office or field office costs that arise out of or are related to any such default, failure to act, or any such omission by the Subcontractor. In addition, the Contractor may take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Subcontractor and may finish the Work by whatever method the Contractor may deem expedient. If the cost of finishing the Work, including compensation for the Contractor's services and expenses made necessary thereby exceeds the unpaid balance hereunder, the Subcontractor shall pay the difference to the Contractor within seven business days of Contractor's demand for same.

**§ 3.5.2** Should one or more other subcontracts, now or hereafter exist between the Subcontractor and Contractor concerning this or any other project, then a breach by the Subcontractor of any subcontract may, at the option of Contractor be considered a breach of all subcontracts; and in that event, Contractor may terminate for cause any and all of the subcontracts so breached or may withhold monies due or to become due on any subcontracts and apply the same toward payment of any damage suffered on that or any other such subcontracts.

## **ARTICLE 4 SUBCONTRACTOR**

*(Paragraphs deleted)*

### **§ 4.1 General**

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor's behalf with respect to the Project. The term "Subcontractor" means the Subcontractor or the Subcontractor's authorized representative.

**§ 4.1.1** The Subcontractor shall furnish qualification documents including, but not limited to its safety plans, insurance certificates, any other relevant and necessary registrations, licenses, etc. in accordance with the Subcontract Documents. Submission of these documents is a prerequisite to performing Work on site. Subcontractors that are not approved will not be allowed on the Project site.

**§ 4.1.2** The Subcontractor shall submit a list of lower-tier Sub-subcontractors it intends to utilize under this Agreement for approval by Contractor and which approval by Contractor may be withheld in Contractor's sole and absolute discretion. The Subcontractor shall furnish qualification documents for each lower-tier Sub-subcontractor including, but not limited to safety plans, insurance certificates, any other relevant and necessary registrations, licenses, etc. in accordance with the Subcontract Documents. Submission of these documents is a prerequisite to performing Work on site. Lower-tier Sub-subcontractors that are not approved will not be allowed on the Project site.

### **§ 4.2 Execution and Progress of the Work**

**§ 4.2.1** For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.2.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors or the Owner's own forces.

**§ 4.2.3 Submittals**

§ 4.2.3.1 The Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents in a time frame set by the Contractor and in such sequence described in both the Subcontract Documents and the Prime Contract Documents as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 4.2.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed or as directed by the Contractor, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit. Within 3 days of the Contractor's request, the Subcontractor shall provide any Sub-subcontract, purchase order, written proof of material releases, any communications to and from material suppliers relevant to accurately track deliveries, installations and completion of the scope of work of this Subcontract. For purposes of this section, the Contractor agrees that dollar values may be redacted from any documents provided.

§ 4.2.5 The Subcontractor agrees that the Contractor and the Architect each have the independent authority to reject Work of the Subcontractor that does not conform to the Prime Contract or the Subcontract Documents. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.2.7 The Subcontractor shall be responsible for and take all necessary precautions to properly protect the Work and the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract. The Subcontractor shall repair, restore or pay for restoring any damage to work performed by the Contractor, the Subcontractor, other subcontractors, the Owner's own forces, which is caused by Subcontractor's laborers, materialmen, Sub-subcontractor or other person or entity directly or indirectly acting for, through or under the Subcontract.

§ 4.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner's own forces, whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Contractor, the Prime Contract or the Subcontract Documents, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces or any errors, inconsistencies, or omissions in the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

*(Paragraph deleted)*

§ 4.2.9 The Subcontractor shall promptly submit to the Contractor a schedule of values as described in accordance with §11.1.5 of this Agreement. In applying for payment, including payment pursuant to Articles 7 and 11, the Subcontractor shall submit statements based upon this schedule. An updated schedule of values shall be submitted by the Subcontractor to the Contractor as required by the Subcontract Documents or as otherwise required by the Contractor. The Subcontractor's schedule of values shall include line items for LEED Documentation (1%) (where LEED requirements apply to the Work), Punch List (1%) and Close Out Documentation (1%) and daily cleaning (1%).

§ 4.2.10 The Subcontractor shall only employ qualified person(s) to properly and effectively manage the Subcontractor's Work who must be present on-site whenever the Work is being performed by the Subcontractor or any of its Sub-subcontractors. The Subcontractor shall submit the persons' qualification to the Contractor for approval. The Contractor has the right to require any person(s) to be substituted at any time in Contractor's sole and absolute discretion during the progress of the Project.

§ 4.2.11 Subcontractor shall attend all coordination meetings with the Contractor and other subcontractors on the job site. In case of a failure of Subcontractor's Project Manager and Field Supervisor to be present at such meetings, the penalty shall be assessed in an amount of \$300.00 for each instance and for each person not appearing (not to exceed \$600.00 per meeting). The failure of the Subcontractor to attend more than three such meetings, absent good cause shown, shall constitute grounds for termination for cause under this Subcontract.

§ 4.2.12 Subcontractor shall sign in all of its employees and any Sub-subcontractor's employees engaged in any activity on the Project site at the start of each day, or at the start of each shift period, as applicable. The Subcontractor shall complete and submit a detailed Work activity report for all Work performed by the Subcontractor and any Sub-subcontractor to the Project field office no later than the completion of each shift.

§ 4.2.13 The Subcontractor shall coordinate all of its Work and all of the Work associated with and related to its Work as well as all inspections of its Work with the Contractor, and other subcontractors. The Subcontractor shall provide the Contractor with 72 hours written notice for the scheduling of any required inspections. These notices shall detail the Work to be inspected and the date, time and location of the work being performed. The Subcontractor shall provide the Contractor with 24 hours written notice of any request to cancel an inspection. The Subcontractor shall be responsible for all costs or damages incurred by the Contractor as a result of the Subcontractor's failure to cancel a scheduled inspection in writing a minimum of 24 hours in advance.

§ 4.2.14 The Subcontractor shall be responsible for all field measurements and shall immediately report to Contractor in writing any errors, inconsistencies, or omissions relating to its Work, the Subcontract Documents, or any related Work if Subcontractor's Work shall be installed or performed on top of or in relation to another subcontractor's Work.

§ 4.2.15 The Subcontractor shall submit complete installation, operating, maintenance manuals for all equipment provided under this Subcontract within 14 days of delivery of the material or equipment to the Project site.

§ 4.2.16 The Subcontractor shall provide all labor and equipment to offload equipment and material into the working area and to install and to complete the Work described herein and all associated and related Work. The Contractor shall not be responsible for providing any elevator services or elevated floor access points for delivery and loading of building materials. The Subcontractor shall provide all labor and equipment necessary to load materials to elevated floors. Parking at the Project site is subject to availability and shall be at the Subcontractor's own risk. On-site parking shall be at the full discretion of the Contractor at all times. The Contractor will not provide designated parking for anyone regardless of any collective bargaining agreements between the Subcontractor and local unions. The Contractor shall not be liable for any risk, or loss of, or damage to, property of individuals, including vehicles or the contents therein, which may result from parking on-site.

§ 4.2.17 The Subcontractor shall coordinate with any utility company if required or related to the Scope of Work described herein. This Subcontractor is responsible for all utility companies' fees unless so stated herein.

§ 4.2.18 The Subcontractor shall provide any extra-materials required by the Subcontract Documents.

§ 4.2.19 The Subcontractor shall provide and perform any and all mockups required by the Subcontract Documents.

§ 4.2.20 The Subcontractor shall comply with all LEED and or sustainability requirements in accordance with the Subcontract Documents including but not limited to plans, specifications and addenda. The Subcontractor shall provide all LEED Credit documentation in its submittal package for all products and acknowledges that submittals that do not include complete LEED documentation may be rejected and returned without action. The Subcontractor's obligation to provide complete LEED documentation shall not give rise to an obligation on the part of the Contractor to discover errors and omissions in the Subcontractor's submittals, which shall be the sole responsibility of the

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Subcontractor. The Subcontractor shall be responsible for all costs and/delays associated with its failure to include complete LEED documentation in its submittals.

§ 4.2.21 The Subcontractor shall perform and submit all field quality control tests and reports for all items installed under this Subcontract, whether supplied by this Subcontractor or by others.

#### § 4.3 Permits, Fees, Notices, and Compliance with Laws

§ 4.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections, whether by government agencies or otherwise, necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract or the Subcontract Documents.

§ 4.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract.

*(Paragraph deleted)*

§ 4.3.3 The Subcontractor and all lower-tier Sub-subcontractors shall comply with the applicable Prevailing Wage Act any and all applicable Prevailing Wage Rates and submit to the Contractor a certified payroll record for each payroll period within 5 days of the payment of wages. A copy of the Certified Payroll Form and Prevailing Wage Rate Schedule are attached in the Appendix to this Agreement.

§ 4.3.4 The Subcontractor and all lower-tier Sub-subcontractors shall also comply with any and all applicable Project Labor Agreement; M/W/DBE utilization and goals; EEO Requirements; special training provisions; and all safety and health requirements as set forth in the Prime Contract or the Subcontract Documents.

#### § 4.4 Safety Precautions and Procedures

§ 4.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract. The Subcontractor shall comply with all safety requirements for the Project in accordance with the Prime Contract, the Subcontract Documents, Contractor's Safety Plan, the Subcontractor's own safety plan, and safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within one day of an injury to an employee or agent of the Subcontractor which occurred at the site, unless earlier notice is required under the Prime Contract.

§ 4.4.1.1 The Subcontractor shall designate an authorized individual who shall attend all of the Contractor's weekly safety meetings ("Competent Person"). This Subcontractor shall thereafter conduct a weekly safety meeting with its employees and Sub-subcontractors to review the subjects and issues discussed at the Contractor's safety meeting, as well as any trade specific safety issues and submit weekly safety meeting minutes to Contractor. The Subcontractor's Competent Person shall be named in writing and the Contractor shall be provided the necessary credentials of the Competent Person prior to the commencement of any Work.

§ 4.4.1.2 The Subcontractor's Competent Person shall be present on site at all times that Work is being performed by the Subcontractor or any of its Sub-subcontractors. The Subcontractor shall provide two complete hard copies of all Safety Data Sheets for all materials to be utilized on the Project site a minimum of 10 days prior to delivery of any materials.

§ 4.4.2 Hazardous materials may exist where there is no reason to believe they could or should be present. The Subcontractor and the Contractor agree that the discovery of unanticipated hazardous materials may make it necessary for the Subcontractor to take immediate measures to protect human health and safety, and/or the environment. The Subcontractor agrees to notify the Contractor immediately should unanticipated hazardous materials or suspected hazardous materials be encountered. The Subcontractor must take measures to preserve the health and safety of the Subcontractor's personnel and the public and/or environment. In the event of discovery of unanticipated hazardous materials, the Owner will be responsible for notifying the relevant federal State and/or local agencies. If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or

exposure of the Contractor, other subcontractors, and other employers on the site to such material or substance, give notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with the laws by the Owner, the Contractor, other subcontractors, and other employers on the site.

**§ 4.4.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and immediately report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. To the extent allowed by the Prime Contract and granted by the Owner, the Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs rendering the hazardous materials harmless if so directed by the Contractor which adjustments shall be accomplished as provided in Article 5 of this Agreement. Contractor shall not be liable to Subcontractor, the Subcontractor's subcontractors or anyone directly or indirectly employed by them for any costs resulting from any delay in the performance of the Work due to the discovery or clean-up of unanticipated hazardous materials, unless and only to the extent that such costs are obtained by the Contractor from the Owner under the Prime Contract.

**§ 4.4.4** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, its agents and employees and the Owner from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and whether or not related to bodily injury, sickness or death or damage to tangible property, arising out of or resulting from the Subcontractor's failure to comply with its obligations under this Section 4.4.

**§ 4.4.5** The Subcontractor shall reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.4.3.

**§ 4.4.6** At all times the Subcontractor shall comply with all OSHA regulations, including, but not limited to, OSHA Fall Protection regulations and project safety policies. The Subcontractor shall employ and have on-site during its operation a minimum of one person trained and certified in OSHA Compliance. The Subcontractor shall submit certification of each person's OSHA Compliance training prior to mobilizing onto the Project Site.

**§ 4.4.7** In addition to the duties owed to the Contractor under Section 4.4.4 and 4.4.5, the Contractor may, but shall not be obligated to, assess penalties against the Subcontractor for infractions committed by their employees, lower tier subcontractor employees, visitors, vendors, or other persons under its control, or for whom the Subcontractor is responsible. Where non-compliance with any safety obligations contained in the Prime Contract, Subcontract Documents, the Project Safety Plan, OSHA Standards, or other applicable laws, statutes, ordinances, codes, rules or regulations is observed, the Subcontractor will be subject to fines in accordance with the below fine schedule. Such fines will be payable by the Subcontractor to the Contractor upon the Contractor's demand. The fine for any third and subsequent violations will be determined by the Contractor's Safety Manager, up to a maximum of \$2,500.00 based on the severity of the violation and the need to deter future violations. Such fines shall not in any way act as a limitation of the Subcontractor's liability for harm resulting from its violation of this section.

Violation	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense
Inadequate clothing	\$100.00	\$200.00
Confined space violation	\$300.00	\$600.00
Crane violation	\$300.00	\$600.00
Damaged/defective extension cord	\$200.00	\$400.00
Damaged/defective electrical cord	\$200.00	\$400.00
Damaged/defective welding lead	\$200.00	\$400.00
Electrical violation	\$200.00	\$400.00
Equipment or tool violation	\$200.00	\$400.00
Eye protection not used	\$100.00	\$200.00
Failure to protect public	\$200.00	\$400.00
Failure to report injury/illness in a timely fashion	\$200.00	\$400.00
Failure to respond to Safety Audit	\$200.00	\$400.00

Fall protection not present, not used, or used incorrectly	\$1000.00/removal from Project	\$1000.00/removal from Project
Fire extinguishers missing/damaged/defective	\$200.00	\$400.00
Fire Watch missing	\$200.00	\$400.00
Footwear inadequate	\$100.00	\$200.00
Forklift violation	\$200.00	\$400.00
Gas cylinders stored/used improperly	\$200.00	\$400.00
General/miscellaneous safety violation	\$200.00	\$400.00
Guardrail removed or altered without alteration	\$500.00/removal from Project	\$1000.00/removal from Project
PPE missing or improperly used	\$100.00	\$200.00
Hot work permit missing	\$200.00	\$400.00
Inadequate clean-up	\$100.00	\$200.00
Ladder damaged/defective	\$300.00	\$600.00
Ladder set-up/used improperly	\$300.00	\$600.00
Lifting device not certified	\$200.00	\$400.00
Lockout/tagout violation	\$200.00	\$400.00
Improper material storage	\$100.00	\$200.00
Material Data Safety Sheet missing	\$100.00	\$200.00
Open floor hole	\$500.00	\$1,000.00
Orientation not attended	\$100.00	\$200.00
Safety vest missing	\$100.00	\$200.00
Scaffold violation	\$200.00	\$400.00

*(Paragraph deleted)*

**§ 4.4.7.1** The Contractor's failure to assess a penalty under Section 4.4.7 shall not relieve the Subcontractor from its obligation to, at all times, fully comply with the requirements of Section 4.4.

#### **§ 4.5 Cleaning Up**

**§ 4.5.1** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract.

**§ 4.5.2** If the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs as determined by the Contractor in its sole and absolute discretion. This Subcontractor shall perform daily cleaning associated and related to the Work and deliver all of its debris to the Project dumpsters (provided by others) regardless of the dumpsters' locations, including but not limited to hoisting down its own debris if required. This Subcontractor acknowledges that if complete clean-up of all Work areas is not performed on a daily basis, the Contractor will perform the clean-up and the Subcontractor will be charged for a full 8 hours, per man, per day for each day of clean up or portion of a day that the Contractor performs daily cleaning of this Subcontractor's materials and debris.

*(Paragraph deleted)*

#### **§ 4.6 Warranty**

**§ 4.6.1** The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Subcontract Documents. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

**§ 4.6.2** All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

*(Paragraph deleted)*



**§ 4.7 Indemnification**

**§ 4.7.1** The Subcontractor agrees to assume responsibility and liability for all damages or injury to all persons, and to all property, arising out of or in any manner connected with the execution of the Work under this Subcontract and to the fullest extent permitted by law, the Subcontractor shall defend and indemnify the Contractor from all such claims including without limitation claims for which the Contractor may be or may be claimed to be liable by reason of its own independent negligence.

The Subcontractor agrees to assume entire responsibility and liability for all damages or injury to all persons, whether employees or otherwise, and to all property arising out of or in any manner connected with the execution of the "Work" under this Subcontract.

The Subcontractor's obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The Subcontractor shall defend and indemnify the Contractor from all such claims, including without limitation, claims for which the Contractor may be or may be claimed to be liable in whole or in part, and legal fees and disbursements paid or incurred to defend any such claims, as well as legal fees paid or incurred in connection with enforcing the provisions of this section.

The Subcontractor further agrees to obtain, maintain, and pay for such general liability insurance coverage as will insure the provisions of this section and other contractual indemnification assumed by the Subcontractor in this Subcontract.

**§ 4.7.2** In claims against any person or entity indemnified under this Section 4.7 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 4.7.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor, or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts.

*(Paragraphs deleted)*

**§ 4.7.3** To the fullest extent permitted by applicable law, the Subcontractor expressly waives, and the Subcontractor shall not suffer or permit any lien or other encumbrance to be filed or to remain of record as a claim against the building or the Project site or against any monies due or to become due for any Work performed or materials furnished by, to or on behalf of Subcontractor or any of its subcontractors or suppliers, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; nor shall the Subcontractor suffer or permit any such lien or encumbrance to be so filed because of any claim or demand against, or any action or non-action of, the Subcontractor or any of its subcontractors or suppliers. The Subcontractor shall defend, indemnify and save harmless the Contractor, the Contractor's sureties and the Owner from any lien or claim of lien filed or maintained by any laborer, materialman, subcontractor or other person or entity directly or indirectly acting for, through or under the Subcontractor, against the Project or any part hereof, or any interest therein, or against any monies due or to become due from the Owner to the Contractor or from the Contractor to the Subcontractor. Without limiting the foregoing, the Subcontractor shall cause any such lien or claim of lien to be satisfied, removed or discharged by bond, payment or otherwise within such time as provided under the Subcontract Documents or ten (10) days from the date of receipt by Subcontractor of written notice from the Contractor or Owner to remove the lien, whichever period is shorter. Should Subcontractor fail to do so, Contractor may, without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor, including without limitation, reasonable attorney fees and any home office or field office costs incurred or to be incurred by Contractor that arise out of or are related to any such failure to act or any such omission by the Subcontractor.

**§ 4.8 Professional Services Provided by Subcontractor**

**§ 4.8.1** The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's

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responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.

§ 4.8.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

§ 4.8.3 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.

§ 4.8.4 The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 4.8.

§ 4.8.5 The Subcontractor shall cause the professional services performed under this Section 4.8 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals.

## ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Contractor reserves the right, from time to time, whether the Work or any part thereof shall or shall not have been completed, to make changes, modifications, additions and/or omissions in the Work as it may deem necessary, upon written order to the Subcontractor (collectively referred to in this Agreement as "Modifications"). The value of the Work to be changed, added or omitted shall be stated in said written order and shall be added to or deducted from the Price.

The value of the Work to be changed, added or omitted shall be determined by the lump sum or unit prices, if any, stipulated herein for such work. If no such prices are stipulated, such value shall be determined by whichever of the following methods or combination thereof Contractor may elect:

- (a) By adding or deducting a lump sum or an amount determined by a unit price agreed upon between the parties hereto; or
- (b) By adding (1) the actual net cost to the Subcontractor of labor in accordance with the established rates, including required union benefits, premiums the Subcontractor is required to pay for workmen's compensation and liability insurance, and payroll taxes on such labor, (2) the actual cost to the Subcontractor of materials and equipment and such other direct costs as may be approved by Contractor less all savings, discounts, rebates and credits, (3) a reasonable allowance for profit and overhead, which may be adjusted by the Contractor in its sole discretion.

Should the parties hereto be unable to agree as to the value of the Modification, the Subcontractor shall proceed with the Work promptly under the written order of the Contractor which order the stated value of the Work shall be omitted, and the determination of the value of the Work shall be referred to the Architect or, if required by the Prime Contract, the Owner, whose decision shall, at the Contractor's election, be final and binding upon the Subcontractor.

In the case of omitted Work Contractor shall have the right to withhold from payments due or to become due to the Subcontractor an amount which, in the Contractor's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement or by the Architect or Owner as hereinabove provided.

All Modifications in the Work ordered in writing by Contractor shall be deemed to be a part of the Work hereunder and shall be performed and furnished in strict accordance with all of the terms and provisions of this Agreement and the other Contract Documents. Subcontractor accepts the responsibility to keep its surety informed of all such Modifications to its contract. The obligations of Subcontractor and Subcontractor's Surety shall not be reduced,

waived or adversely affected by the issuance of such change orders, additions or deductions even if subcontractor fails to inform surety of same and Contractor shall not be required to obtain consent of the surety to such Modifications.

**§ 5.2** The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than seven business days before the time by which the Contractor's claim must be made. In the event the time within which the Contractor must submit claims to the Owner is less than seven business days, claims shall be received by the Contractor in such a time and manner to permit the Contractor sufficient opportunity to review and assess the claim prior to its deadline to submit the claim to the Owner. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

*(Paragraph deleted)*

## **ARTICLE 6 CLAIMS AND DISPUTES**

### **§ 6.1 Mediation**

**§ 6.1.1** Claims, disputes, or other matters in controversy arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§ 6.1.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures currently in effect. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the American Arbitration Association unless the parties mutually agree in writing to a substitute mediation administrator.

**§ 6.1.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Passaic County, New Jersey, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 6.2 Binding Dispute Resolution**

*(Paragraphs deleted)*

**§ 6.2.1** For any claim subject to, but not resolved by mediation pursuant to Section 6.1, at the sole option of Contractor, it shall be resolved either by arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association and judgment may be entered on the basis of the award; or, if Contractor does not opt for arbitration, then such dispute shall be decided in the Superior Court of the State of New Jersey, and venue of any such action shall be placed in Passaic County, New Jersey.

**§ 6.2.2** The Subcontractor agrees that it shall not be entitled to nor claim any extension of time or additional compensation, cost reimbursement or damages for any dispute, delay, obstruction, hindrance or interference to the Work except to the limited extent that Contractor has actually recovered corresponding extension of time or additional compensation, cost reimbursement or damages from the Owner under the Prime Contract for such dispute, delay, obstruction, hindrance or interference, and then only to the extent of the amount, if any, which Contractor on behalf of the Subcontractor, actually received from the Owner on account of such dispute, delay, obstruction, hindrance or interference. Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on work actually performed), recovery of overhead (including home office overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by Contractor, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the work. In the event that Contractor is involved in an action or proceeding against the Owner, at any time whatsoever, then the dispute between Contractor and Subcontractor shall be decided in the same manner, location and forum as provided for in the Prime Contract. In the event an action has been previously commenced by the Subcontractor against Contractor, the Subcontractor agrees to withdraw such action, and participate in the action or proceeding between Contractor and Owner or Architect. The Subcontractor agrees to participate in such action or proceeding and to present its own claim therein, through an attorney chosen by Contractor at the Subcontractor's own expense and to be bound by the decision thereon. The express purpose of this paragraph is to ensure consistency in the resolution of disputes arising out of all Work at the

Project. If such dispute is prosecuted or defended by Contractor, the Subcontractor shall furnish all documents, statements, witnesses and other information necessary and pay or reimburse Contractor for all costs incurred in connection therewith. In the event of a recovery on the dispute, the amount paid to Contractor on account of the Subcontractor's claim shall be paid to the Subcontractor less the Subcontractor's proportionate share of the expenses, costs and attorneys' fees incurred by Contractor in prosecuting the claim. It is expressly understood and agreed that such payment by the Owner shall be a condition precedent to the Contractor's obligation to make payment to the Subcontractor.

§ 6.2.3 Contractor, at its sole discretion, may consolidate an arbitration or other proceeding conducted under this Agreement with any other arbitration or proceeding to which it is a party or join additional parties without invalidating or limiting this Article.

§ 6.2.4 Notwithstanding the submission of any claim by Subcontractor which is the subject of mediation or binding dispute resolution, the Subcontractor shall continue to perform all of its work and/or alleged extra work pending final resolution of the claim.

§ 6.2.5 This Agreement and all Contracts hereunder shall be governed and interpreted under the laws of the State of New Jersey, and venue shall be maintainable in Passaic County, New Jersey.

### § 6.3 Waiver of Claims for Consequential Damages

The Subcontractor waives claims against Contractor for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to termination in accordance with Article 7. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Agreement.

## ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

*(Paragraphs deleted)*

### § 7.1 Termination

§ 7.1.1 The Contractor may, immediately upon written notice to the Subcontractor, and without prejudice to any other remedy the Contractor may have, terminate the Subcontract for some or all portions of the Work herein which remain unexecuted by the Subcontractor if:

- .1 The Subcontractor ceases doing business or makes an assignment for the benefit of creditors; or,
- .2 Bankruptcy, insolvency, dissolution or liquidation proceedings of any nature are instituted by or against the Subcontractor; or
- .3 The Subcontractor fails or neglects to carry out the Work in accordance with the Subcontract Documents, including but not limited to, providing defective or non-conforming Work or causing delays in execution of the Work, or otherwise fails to fulfill its obligations under this Subcontract and fails within seven calendar days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness to Contractor's sole satisfaction (collectively, "Subcontractor's Default").

§ 7.1.2 In the event of termination pursuant to this Section 7.2.1, the Contractor shall be entitled to recover from Subcontractor without limitation, all costs, losses, damages, penalties and fines incurred by the Contractor as a result of the Subcontractor's Default, including without limitation those remedies and damages set forth in Section 3.5.1 and reasonable attorneys' fees and any home office or field office costs that arise out of or are related to any such Subcontractor's Default, failure to act, or any such omissions by the Subcontractor. The Contractor may take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Subcontractor and may finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and all other losses, damages, penalties and fines incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor for the unpaid Work executed by the Subcontractor. If such expenses, losses, damages, penalties and fines of Contractor exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor within seven business days of Contractor's demand for same.

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§ 7.1.3 The Contractor may terminate this Subcontract for its own convenience or if the Owner terminates the Prime Contract for the Owner's convenience, in which case the Contractor shall deliver notice of termination to the Subcontractor

§ 7.1.4 In case of termination for the Contractor's or Owner's convenience, and provided the Contractor has received payment from the Owner, the Subcontractor shall be entitled to receive payment for Work properly executed by the Subcontractor up to the time of termination in such amount as is determined by the Contractor in its sole discretion, and pursuant to the other payment provisions in this Agreement. It is expressly understood and agreed that such payment by the Owner shall be a condition precedent to the Contractor's obligation to make payment to the Subcontractor.

§ 7.1.5 Upon receipt of notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work;

and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

## § 7.2 Suspension by the Contractor for Convenience

§ 7.2.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine at no additional cost to the Contractor.

## § 7.3 Assignment of the Subcontract

§ 7.3.1 In the event the Owner terminates the Prime Contract, the Contractor may assign this Subcontract to the Owner with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents. If the Work of the Prime Contract has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted, as determined by the Contractor in its sole and absolute discretion provided the Owner agrees to such adjustment.

### § 7.3.2 The

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Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract, or subcontract portions of this Subcontract without the written consent of the Contractor.

*(Paragraphs deleted)*

## ARTICLE 8 THE WORK OF THIS SUBCONTRACT

*(Paragraphs deleted)*

§ 8.1 The Subcontractor shall perform and execute all of the work shown and described in the Subcontract Documents, including, without limitation, the Prime Contract, plans, specifications, general and supplementary conditions, as well as all addenda thereto, which is attached hereto and incorporated herein, as well as all labor, materials, equipment, permits, hoisting, supervision, services and other items required and/or necessary, whether or not specified or otherwise implied, to complete the Work and provide a complete and working system ("Work"). The Work shall include all work related to the Subcontractor's trade that may be reasonably inferred from the Contract Documents, regardless of whether the work is specifically included in the designated trade's drawings or specification sections. The Contractor's determination as to whether an item is included within the Subcontractor's Work shall be final and binding. The Scope of Work shall be governed by the applicable Plans and Specifications for the Project and for that Work and as set forth below:

1. This Subcontractor shall submit, detail, fabricate, deliver, install, commission, startup and warranty all the plumbing work systems scope of work with the specified size, gauge, color and finishes including but not limited to; seismic protection for miscellaneous equipment, plumbing, general purpose; plumbing piping insulation, solar water heating equipment, pipe joint materials, underground and aboveground piping, floor

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drains and cleanouts, tubes and fittings, specialty fittings, couplings, valves, joining materials, expansion fittings and loops for plumbing piping, sleeves and sleeve seals for plumbing piping, escutcheons for plumbing piping, general duty valves for plumbing piping, hangers and supports for plumbing piping and equipment, identification for plumbing piping and equipment, labels, warning signs and tags, plumbing piping insulation, water heaters, domestic water piping, domestic water piping specialties, vacuum breakers, backflow preventers, hose bibs, drain valves, water hammer arresters, heat traps, sanitary waste and vent piping, sanitary waste piping specialties, cleanouts, floor drains, shower drains, vent caps, grease interceptors, solids interceptors, storage tanks, facility storm drainage piping, storm drainage piping specialties, cleanouts, downspout boots, sump pumps, circulating pumps, water pressure booster system, variable speed pumping systems, domestic water service meter, pipe drains, facility gas piping system, radon piping and risers, flush valve water closets, flush valve urinals, wall hung lavatories, countertop lavatories, kitchen sinks, service sinks, drinking water coolers, exterior drinking fountains, faucets, shower faucets, water softener units, softener tanks, underdrain system, brine application system, cation-exchange, controls, valves, solar water heating equipment, piping, tubing, fittings, joining materials, pressure gauges, thermometers, collector subsystem, solar collector arrays, transport subsystem, heat exchangers, control and instrumentation system, gas piping metering and integration with the building management system capabilities, miscellaneous steel, coupling for cast-iron pipe, coupling for steel pipe and grooved pipe, flange gaskets, brazing materials, brazing flux, solder material and flux, PTFE tape, rubber gaskets for cast-iron soli-pipe and fittings, rubber gaskets for grooved pipe, flexible elastomeric seals, bolts and nuts for grooved pipe couplings, solvent cement for transition joints as specified, plastic solvent cement as specified, flanged fittings, flanges, bolts, nuts, bolt patterns, press fittings for copper pipe and tube, heat-fusion joints for polypropylene piping, water hammer arrester, copper, sheet and strip, asphalt roof cement, hose clamps, supports for off-the-floor plumbing fixtures, metallic cleanouts, plumbing fixture setting compound, coal-tar protective coatings and linings for steel water pipelines, hypochlorites, liquid chlorine, pressure and vacuum indicating dial type gauges, thermometers, pipe insulation materials as specified, pipe hangers, inserts, and supports, valves as specified, backwater valves, wall faucets, wall hydrants (Frostproof), lawn faucets, yard hydrants, relief valves, thermostatic mixing valves, fixtures as specified, including Vitreous China, lavatories, automatic controls, flush valve water closets, flush valve urinals, wheelchair flush valve type urinals, non-water use urinals, precast terrazzo shower floors and mop sinks, emergency eyewash and shower, backflow preventers, floor and shower drains, metallic shower pan drains, drains and backwater valves, shower facets and drain fittings, area drains, floor sinks, boiler room, pit and sight drains, roof drains and expansion joints, shower pan as specified, traps, as specified, hot water storage tanks, pumps as specified, , escutcheon plates, pipe sleeves as specified, pipe hangers, nameplates, labels, noncombustible thermal-insulation system materials as specified, insulation as specified, pipe fittings, flexible blankets, adhesives as specified, insulating cement, caulk, corner angles, jacketing, coatings as specified, tape, solar energy system arranged for preheating of service (domestic and/or process) water using flat plate liquid solar collectors, solar collector array, storage tank, pump, automatic controls, instrumentation, interconnecting piping and fittings, portable water heat transfer fluid in an open loop, expansion tank, accessories, equipment guards, flanges, dielectric waterways, calibrating balancing valves, air vents, strainers, pressure gauges, thermometers, pipe threads and supports, solar collector construction, absorber plate and flow tubes, cover glazing and insulation, casing, mounting and assembly hardware, piping, support for solar collector array, storage tank, transport subsystem, control and instrumentation subsystem as specified, finishes as specified, access doors, core drilling and fire stopping at all penetrations, vibration isolation, flushing and cleaning all piping systems, all other materials needed to complete installation, testing and inspection, all excavation, backfilling, and bedding material associated with the scope described herein, trench shoring, cleaning, covering and protection, commissioning, flushing and startup all systems, shop drawings and calculations signed and sealed by Delaware Licensed Professional Engineer in accordance with the Subcontract Documents.

2. This Subcontractor shall engineer where required, submit, detail, purchase, fabricate, deliver, phase, install, commission, startup and warranty the Heating, Ventilating and Air Conditioning (HVAC) systems scope of

work with the specified materials, equipment, size, gauge, thickness and finishes including but not limited to; seismic protection for miscellaneous equipment, seismic protection for mechanical equipment, air supply, distribution, ventilation, and exhaust systems, basic mechanical materials and methods, common piping for HVAC, vibration and seismic controls for HVAC piping and equipment, testing, adjusting and balancing for HVAC, thermal insulation for mechanical systems, facility gas piping, refrigerant piping, chemical treatment of water for mechanical systems, metal ducts, HVAC power ventilators, air terminal units, panel filters, heating boilers, water chillers, vapor compression type, chilled, chilled-hot, and condenser water piping systems, modular indoor central-station air-handling units, air coils, piping, tubes and fittings, pipe portals, joining materials, piping specialties, valves, sleeves and sleeve seals, metal ducts, single and double wall rectangular ducts and fittings, single and double wall round and flat oval ducts and fittings, sheet metal material, duct liner, acoustical duct liner, sealants and gaskets, air duct accessories, duct insulation, blast resistant dampers, fire dampers, smoke dampers, combination fire and smoke dampers, backdraft dampers, pressure relief access doors, manual balancing dampers, condensate drain piping, flushing and certification of HVAC piping, duct leakage testing, air supply and exhaust air dampers, air deflectors and branch connectors, duct silencers, duct mounted access doors, flexible connectors, flexible ducts, diffusers, registers and grilles, louvers, HVAC power ventilators, fans, centrifugal fans, in-line centrifugal fans, centrifugal type power wall ventilators, centrifugal type power roof ventilators, hangers and supports for HVAC piping, ductwork and equipment, vibration isolation and seismic controls for HVAC piping, ductwork and equipment, identification for HVAC piping, ductwork and equipment, testing, adjusting and balancing for HVAC, thermal insulation for mechanical systems, commissioning for HVAC systems, air flow measuring stations, any HVAC related meters, refrigeration piping, chemical treatment of water for mechanical systems, heating boilers, boiler breaching and stacks, flues associated with the hot water heater, drain pans, sound attenuators, radiant floor heating systems, trims, fuel burning equipment, burners and controls, finned tube radiators, unit heaters, cabinet unit heaters, air handling units, propeller unit heaters, chillers, vapor compression type, chilled water piping systems, underground and exterior above ground chilled water piping system, chilled water circulating pumps, expansion tanks, air separator tanks, water treatment systems, heating and utilities systems, unitary heating and cooling equipment, VAVs, makeup air units, bipolar ion generators, exhaust fans, variable frequency controllers and drives, common motor requirements for HVAC equipment, motor starts, all equipment related starts and disconnects, split system cooling units, self-contained cooling units, all HVAC system pumps, expansion tanks, glycol feed unit, air vents, all required rigging and hoisting, core drilling and fire stopping at all penetrations, vibration isolation, flushing and cleaning all piping systems, all other materials needed to complete systems installation, testing and inspection, all excavation, backfilling, and bedding material associated with the scope described herein, trench shoring, cleaning, covering and protection, commissioning, flushing and startup all systems, identification plates, equipment guards and access, anchor bolts, seismic anchorage, painting, indoor air quality, duct systems as specified, air systems equipment as specified, air handling units, terminal units, energy recovery devices as specified, supplemental components/services, electrical heat tracing, pipe and fittings, piping specialties, valves as specified, bituminous coating, bolting, caulk, escutcheons, flange gaskets, grout, pipe tread compounds, supporting elements, pipe lagging, duct sound attenuator, vibration isolator general requirements as specified, vibration isolation mounts, hangers and restraints, vibration isolated equipment bases, flexible connectors for pipes and ducts; testing, adjusting and balancing for HVAC as specified; insulation system, adhesives as specified, pipe insulation system as specified, duct insulation system as specified, equipment insulation systems as specified; gas piping system and fittings, valves, risers, pipe hangers and supports, regulators and shutoff valves, automatic gas shut-off, bolting (bolts and nuts), gaskets, identification for aboveground piping, standard commercial products for refrigerant piping, refrigerant piping system as specified, pipe, fitting and end connections (joints), piping accessories as specified, factory coating and insulation as specified; nameplates, water analysis, water treatment system as specified, chilled water system, low and medium temperature hot water boilers and heat exchangers, high temperature hot water boilers, test kits, supplemental components as specified; metal duct system description as specified, galvanized steel ductwork materials, brazing materials, mill-rolled reinforcing and supporting

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materials, components and dampers as specified, acoustical flexible duct as specified; fan type and specifications as specified, housing style as specified, fan motor, bases, roof curbs, back-draft dampers, screens, sound baffles, fan acoustical performance as specified; bypass single-duct air terminal units, source quality control as specified, filters as specified, filter gages and manometers, boilers, fuel burning equipment, combustion control equipment, pumps as specified, cold water connections, heating and ventilating units, air handling units, fitting and accessories as specified, electrical equipment as specified, boiler water treatment; self-contained water chillers, vapor compression type, chiller components as specified, refrigerant accessories as specified, factory coating and insulation as specified, factory tests, supplemental components/services, air-cooled chiller acoustical performance requirements as specified; steel piping, polypropylene piping (chilled water applications only), copper tubing, pumping accessories, pumps, expansion tanks, air separator tanks, water treatment systems, related components/services, finishes as specified; Air Handling Units and cabinets, fan, coils, insulation, eliminators, filters, air handling units acoustical insulation as specified, air coils as specified, all required rigging and hoisting, saw cutting, core drilling, caulking and sealants, fire stopping, including all material needed to complete installation to achieve a complete functional system, testing and inspection, cleaning, covering and protection, commissioning, flushing and startup all systems, detailing, coordination and shop drawings, signed and sealed shop drawings and calculations by Delaware Licensed Professional Engineer, etc. in accordance with the Subcontract Documents including but not limited to; drawings, specifications and addenda.

3. This Subcontractor shall coordinate all openings that will penetrate the structure walls and/or floors with the various other subcontractors through the Contractor. Any missed or incorrectly located openings will be this Subcontractor's responsibility to perform, correct and reinstall in accordance with the Subcontract Documents and all the costs associated with the repair work including, but not limited to: engineering, bracing installation, etc. will be this Subcontractor's responsibility.
4. This Subcontractor shall lay out for all housekeeping pads for floor mounted equipment in accordance with the Subcontract Documents. This Subcontractor shall provide layout for coordination of all floor and wall openings at least 6 weeks prior to the partitions being constructed or steel being detailed. This Subcontractor is responsible for any missed openings resulting from failure to timely provide coordination information or from providing inaccurate information.
5. This Subcontractor shall provide Coordination Drawings, incorporating the scope of work described herein with all other trades involved in the Coordination Drawings and all the associated and related work in accordance with the Subcontract Documents.
6. This Subcontractor shall disconnect all the utilities associated with the scope of work described herein in the existing school prior to the school being demolished.

§ 8.2 Any designations in the Subcontract Documents relating to the Subcontractor's "trade" are for informational purposes only and shall in no way act as a limitation or restriction on the Subcontractor's Work.

## ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

*(Paragraphs deleted)*

§ 9.1 The date of commencement of the Subcontractor's Work, shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor. The Subcontractor's Work shall commence immediately upon the execution of this Agreement.

§ 9.1.1 The Subcontractor agrees that the dates of commencement, intermediate milestones and completion are time of the essence conditions of this Agreement. The Subcontractor further agrees that the dates of commencement, intermediate milestones and completion shall be fixed in accordance with the early start and early finish dates in the Project Schedules as may be issued from time to time during the performance of the Work by the Contractor.



**§ 9.2 Subcontract Time**

**§ 9.2.1** The Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontract Time shall be measured from the date of commencement of the Subcontractor's Work.

*(Paragraphs deleted)*

**§ 9.2.2** Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the Subcontractor shall achieve substantial completion of the Subcontractor's Work not later than that required of the Contractor by the Project Schedules as may be issued or modified from time to time during the performance of the Work by the Contractor:

**§ 9.2.3** Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the Subcontractor agrees that all submittals shall be made to coincide with the required dates in the Prime Contract.

*(Table deleted)*

**§ 9.2.4** If the Subcontractor fails to achieve substantial completion as provided in this Section 9.2, liquidated damages, if any, shall be assessed as set forth in Section 3.4.

**§ 9.3** With respect to the obligations of the Subcontractor, time is of the essence of this Subcontract.

**§ 9.4** No claim by the Subcontractor for an extension of time, or compensation for such, will be valid without the Contractor's first receiving a change order granting an extension of time and/or compensation for such from the Owner and the making of a Claim by the Subcontractor in accordance with Section 5.3. To the fullest extent permitted by law, the Subcontractor waives its right to any claim for damages for delay from Contractor except to the extent, if any, that the Contractor is actually compensated by Owner for any such specific and designated claims presented by Contractor (in its sole discretion) to Owner on behalf of the Subcontractor, but Contractor shall have no obligation to do so. The Subcontractor expressly confirms its understanding that this is a complex project with multiple prime contractors and/or numerous other subcontractors, which conditions may result in, by way of example only and not by way of limitation, coordination and interference issues, out of sequence work, recurring schedule revisions, compression and/or acceleration of the Work, stoppage of the Work, and/or other unspecified delays to the Project and for which the Subcontractor may not be compensated. Subcontractor expressly undertakes and assumes the risks of the above and disclaims any liability for same on the part of the Contractor.

**§ 9.5** The Subcontractor agrees not to make, and hereby waives any claim for damages for delay, including those resulting from increased labor or material costs on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated and agrees that the sole right and remedy therefore shall be an extension of time provided the required conditions as to written claims has been met and provided the Owner issues a Modification to the Contractor granting an extension of time under the Prime Contract.

**ARTICLE 10 SUBCONTRACT SUM**

**§ 10.1** The Contractor shall pay the Subcontractor the Subcontract Sum in current funds for the Subcontractor's performance of the Subcontract. The Subcontract Sum shall be Four Million Five Hundred Ninety Nine Thousand Dollars and Zero Cents (\$ 4,599,000.00 ), subject to additions and deductions as provided in the Subcontract Documents.

*(Paragraph deleted)*

**§ 10.2 Alternates**

**§ 10.2.1** Alternates, if any, included in the Subcontract Sum:

**Item**

**Price**

**§ 10.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Contractor following execution of this Agreement. Upon acceptance, the Contractor shall issue a Modification to this Subcontract:

*(Insert below each alternate and the conditions that must be met for the Contractor to accept the alternate.)*



Item	Price	Conditions for Acceptance
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**§ 10.3 Unit prices, if any:**

*(Identify and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price Per Unit (\$0.00)
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**§ 10.4 Allowances, if any, included in the Subcontract Sum:**

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price
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**ARTICLE 11 PAYMENTS****§ 11.1 Progress Payments**

§ 11.1.1 Based upon Applications for Payment submitted to the Contractor by the Subcontractor, corresponding to Applications for Payment submitted by the Contractor to the Architect, and Certificates for Payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum (and whether or not the Subcontractor provides the Contractor with a payment bond in the full penal sum of the Subcontract Sum), payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor in trust for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.1.1.1 The Subcontractor shall provide in-progress as-built drawings to the Contractor no less than 14 days prior to the end of each billing cycle. Submission of in-progress as built drawings for all installed Work is a condition precedent to approval and payment of progress payments.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

as per the Prime Contract

§ 11.1.3 Provided an Application for Payment is received by the Contractor not later than the 15<sup>th</sup> day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next Application for Payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than ten business days after the Contractor receives payment from the Owner unless the Contractor asserts any offset or claim to such payments otherwise to be made to the Subcontractor. The foregoing shall not apply to retainage, which the Contractor may withhold until Final Completion as set forth in Section 11.1.8. It is expressly understood and agreed that such payment by the Owner shall be a condition precedent to the Contractor's obligation to make payment to the Subcontractor. That is, the Contractor shall have no liability or responsibility for any amounts due or claimed to be due the Subcontractor for any reason whatsoever except to the extent that the Contractor has actually received funds from the Owner specifically designated for disbursement to the Subcontractor.

§ 11.1.4 If the Subcontractor's Application for Payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Architect.

§ 11.1.5 The Subcontractor shall submit to the Contractor, for the Contractor's approval, a proposed schedule of values prior to submitting the Subcontractor's first Application for Payment. Whether or not a proposed schedule of values has been so approved, each subsequent Application for Payment by the Subcontractor shall only be based upon the most recent schedule of values submitted by the Subcontractor and approved by the Contractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such detail and form and supported by such data and evidence to substantiate its accuracy as the Contractor may require. This schedule of values, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's Applications for Payment.

§ 11.1.6 Applications for Payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the Application for Payment.

§ 11.1.7 Subject to the provisions of the Subcontract Documents, including without limitation section 11.1.3 above, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Subcontract Sum properly allocable to completed Work;
- .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a bonded warehouse or other location agreed upon between the parties in writing (collectively "Stored Materials"); and
- .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of previous payments made by the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld or nullified, in whole or in part, a Certificate for Payment for a cause that is the fault of the Subcontractor;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, for a cause that is the fault of the Subcontractor; and
- .4 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

#### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made, the Contractor may withhold the following amounts as retainage from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

0% on Subcontractor's Work and 0% on Stored Materials. Notwithstanding the foregoing, if the Prime Contract permits or requires the Contractor to retain a higher percentage, the Contractor shall retain the higher percentage set forth in the Prime Contract. We reserve the right at any time point during the Project to withhold up to 10%.

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

not applicable

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to substantial completion of the entire Work, including modifications for substantial completion of portions of the Subcontractor's Work as provided in Section 9.2.3, insert provisions for such modification.)*

The Contractor shall not be required to reduce such retainage percentage until Final Payment.

§ 11.1.9 Upon the partial or entire disapproval by the Contractor of the Subcontractor's Application for Payment, the Contractor shall provide notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.1.10 In addition to the duties owed by the Subcontractor under Section 4.7.3, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 11.2

*(Paragraphs deleted)*

### Final Payment

*(Paragraphs deleted)*

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner unless the Contractor asserts any offset or claim to such payments otherwise to be made to the Subcontractor. It is expressly understood and agreed that such payment by the Owner shall be a condition precedent to the Contractor's obligation to make payment to the Subcontractor. That is, the Contractor shall have no liability or responsibility for any amounts due or claimed to be due the Subcontractor for any reason whatsoever except to the extent that the Contractor has actually received funds from the Owner specifically designated for disbursement to the Subcontractor.

§ 11.2.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied and all warranty and guaranty documents required by this Subcontract or the Prime Contract, complete closeout documents in accordance with the Subcontract Documents, including but not limited to all as-built drawings, guarantees, warranties, etc., for all labor, material and equipment included under the Subcontract. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final Application for Payment.

## ARTICLE 12 INSURANCE AND BONDS

### § 12.1 Subcontractor's Required Insurance Coverage

§ 12.1.1 The Subcontractor shall purchase and maintain insurance from an insurance company licensed to issue insurance policies in the State of Delaware, and with an "A" or better rating from A.M. Best Company of the following types of coverage and limits of liability:

§ 12.1.1.1 Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.

- a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
- b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
- c) Contractor, Owner and all other parties required of the Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 10 (10 93) AND CG 20 37 (10 01) or CG 20 33 (10 01) AND CG 20 37 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

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- d) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
- e) CGL coverage shall not have a residential exclusion.

#### § 12.1.1.2 Automobile Liability

- a) Business Auto Liability with limits of at least \$1,000,000 each accident.
- b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- c) Contractor, Owner and all other parties required of the Contractor, shall be included as insureds on the auto policy via the use of form CA 20 48 02 99 or the equivalent.

#### § 12.1.1.3 Commercial Umbrella

- a) Umbrella limits must be at least \$5,000,000.
- b) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.

#### § 12.1.1.4 Workers Compensation and Employers Liability

- a) Employers Liability Insurance limits of at least \$1,000,000 each accident, \$1,000,000 for bodily injury by accident, and \$1,000,000 each employee for injury by disease.
- b) Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.
- c) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy

*(Table deleted)*

§ 12.1.1.5 The Subcontractor shall also be subject to all insurance requirements set forth in the Insurance Requirements attached in the Appendix to this Agreement, if any. In the event of an inconsistency between the foregoing provisions and the Insurance Requirements attached in the Appendix to this Agreement, the more stringent requirement and/or higher limit shall govern.

§ 12.1.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 12.1.3 If professional services are required under Section 4.9, the Subcontractor shall provide the professional liability insurance coverage required under this Section 12.1 for the following period after completion of the Work:

**§ 12.1.4 Certificates of Insurance.** The Subcontractor shall provide certificates of insurance such as Acord Certificate of Liability Insurance (Form ACORD 25 most recent revision) acceptable to the Contractor evidencing compliance with the requirements in this Article 12 at the following times: (1) prior to commencement of the Subcontractor's Work; (2) with each Application for Progress Payment; (3) upon renewal or replacement of each required policy of insurance; and (4) upon the Contractor's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required in this Article 12. The certificates shall show the Contractor and the Owner as additional insureds on the Subcontractor's Commercial General Liability and any excess or umbrella liability policy.

The Certificate of Insurance shall also state in the "Description of Operations" the exact language found in the Insurance Requirements attached in the Appendix to this Agreement.

Certificate must state that all coverage provided, including 'umbrella' includes Broad Form Contractual Liability coverage. Broad form contractual liability coverage is required by this Subcontract. Umbrella coverage shall be identified as umbrella coverage over and above the limits of the General Liability, Automobile and Workers Compensation policies and not merely as 'excess umbrella' policy.



Certificate must state that all coverage provided includes a Waiver of Subrogation as to all Additional Insured parties for all insurance policies. All policies must be endorsed as necessary to confer such rights on the Additional Insureds and the Subcontractor shall provide a copy of the endorsement to the Contractor prior to the commencement of Work.

**§ 12.1.5 Deductibles and Self-Insured Retentions.** The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

**§ 12.1.6 Additional Insured Obligations.** To the fullest extent permitted by law, the Subcontractor shall cause all of its required insurance coverage under this section 12.1 to include: (1) the Contractor, the Owner, the Architect, and the Architect's consultants and all other parties that are identified as such on the Insurance Requirements attached in the Appendix to this Agreement or are required by the Prime Contract as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Subcontractor shall provide a copy of the endorsement to the Contractor prior to the commencement of Work.

**§ 12.1.7 Notice of Cancellation or Change in Coverage.** Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall have the right to suspend the Work in accordance with this Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

**§ 12.2 Subcontractor's Required Performance Bond and Payment Bond**

**§ 12.2.1** Prior to the commencement of the Work the Subcontractor shall:

*(Paragraphs deleted)*

- ✓ Provide the Contractor with Performance and Payment Bonds in amount of the Subcontract and in the form attached in the Appendix to this Agreement at the Subcontractor's own cost.

**§ 12.2.2** Performance and Payment Bonds must be issued by a Surety with an "A" or better rating from A.M. Best Company; that is "Treasury Listed" by the United States Department of the Treasury. Approval of the Surety shall be determined by the Contractor in good faith and in its sole and absolute discretion. The Performance and Payment Bonds must include an Affidavit of the Surety's Attorney-in-Fact, Financial Statement and Surety Disclosure Statement and Certification.

**§ 12.2.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under this Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**§ 12.3 Contractor's Insurance and Bond Obligations**

**§ 12.3.1** When requested in writing, the Contractor shall furnish to the Subcontractor certificates of insurance evidencing insurance coverage required of the Contractor under the Prime Contract.

**§ 12.3.2** When requested in writing, the Contractor shall furnish to the Subcontractor a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

**§ 12.4 Property Insurance**

**§ 12.4.1** When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 12.4.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work.

§ 12.4.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for by the Subcontractor.

#### § 12.5 Waivers of Subrogation

Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above. Subcontractor's Workers Compensation policy has WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT with Contractor, Owner and Architect listed on SCHEDULE.

### ARTICLE 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS

§ 13.1 The Subcontractor shall provide any and all temporary facilities, equipment or services necessary to successfully complete its Work.

*(Paragraphs deleted)*

### ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

#### § 14.2

*(Paragraphs deleted)*

##### Notice

§ 14.2.1 Except as otherwise provided in Section 14.2.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served and received by a party (i) at the time delivered to an agent of the other party, if personally delivered; (ii) two business days after deposited in the mail, postage prepaid, if mailed first-class; (iii) when receipt of confirmation of delivery occurs, if telecopied or emailed during regular business hours; or (iv) on the next business day, if timely delivered to an air courier guaranteeing overnight delivery.

§ 14.2.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### § 14.3

*(Paragraphs deleted)*

Neither the Contractor's nor the Subcontractor's representative shall be changed without ten days' prior notice to the other party.

§ 14.4 The invalidity of any provision of the Subcontract Documents shall not invalidate the Subcontract or its remaining provisions. If it is determined that any provision of the Subcontract violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Subcontract.

*(Paragraphs deleted)*

§ 14.5 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

*(Paragraphs deleted)*

### ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

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- .1 AIA Document A401™–2017, Standard Form Agreement Between Contractor and Subcontractor, including any revisions thereto;

- .2 Prime Agreement between the Owner and Contractor, including all exhibits

(Paragraphs deleted)

thereto;.3 The undersigned hereby confirms receipt of the following Other documents forming part of the subcontract:

(List other documents, if any, forming part of the Agreement.)

<b>Project Manual</b> , prepared by US Army Corps of Engineers, Philadelphia District		
<b>Construction Contract W912BU-17-R-0032</b>		02-27-19
<b>Amendment 001</b>		01-12-18
<b>Amendment 002</b>		01-16-18
<b>Amendment 003</b>		02-13-18
<b>Amendment 0004A</b>		03-02-18
<b>Amendment 004</b>		02-13-18
<b>Amendment 005</b>		02-28-18
<b>Amendment 006</b>		03-01-18
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<b>G-005</b>	ATFP STANDARDS COMPLIANCE SITE PLAN	02-26-18
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<b>C-004</b>	LEGEND & GENERAL NOTES (CONTINUED)	06-2017
<b>C-101</b>	RECOMMENDED SEDIMENT & EROSION CONTROL PLAN - STAGE 1	06-2017
<b>C-102</b>	RECOMMENDED SEDIMENT & EROSION CONTROL PLAN -	06-2017

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User Notes:

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	Certified Payroll Form	
	W-9 Request for TIN	



	Sales Tax Exempt Use Letter	
	Change Order Request Form	
	Request For Information Form	
	Submittal Procedure Outline	
	Procedure for Applications for Payment	
	AIA Document G702	
	AIA Document G703	
	Partial Release, Waiver and Subcontractor's Affidavit of Payment	
	Final Release, Waiver and Subcontractor's Affidavit of Payment	
	AIA Document G706	
	AIA Document G706A	
	AIA Document G707	
	Agreement for Materials Stored Off Site	
	Affidavit and Bill of Sale for stored Materials (Exhibit A)	
	Inventory for Materials stored off site (Exhibit B)	
	Insurance Requirements	
	Performance Bond Form	
	Payment Bond Form	
	Competent Person Form	
	Accident Prevention Plan	

This Agreement entered into as of the day and year first written above.

  
CONTRACTOR (Signature)

Hossam Ibrahim, Vice President  
(Printed name and title)

  
SUBCONTRACTOR (Signature)

Anthony S. Degli Obizzi  
(Printed name and title)

Welsh Elementary School/Dover Air Base Middle School Replacement

SUBCONTRACT ATTACHMENT

Because the Owner is an instrumentality or agency of the United States of America, the Contract between Contractor and the Owner is subject to specific regulations and the Contract Documents include provisions that require Contractor to impose obligations on Subcontractor. It is the intent of the Subcontract that, to the full extent required by the Contract and the law, Subcontractor is obligated to perform in accordance with all such regulations and provisions and to require such performance from its subcontractors of any tier as applicable, all without additional expense to Contractor. In furtherance of such intention the following provisions are included in the Subcontract. In the event of conflict between this attachment and other provisions of the Subcontract, this attachment shall control.

1.0 FEDERAL GOVERNMENT REQUIREMENTS

- 1.1 Subcontractor acknowledges that the Project is funded in whole or in part by the government of the United States of America, and that as a result, full and complete understanding of and compliance with unique laws and regulations are required. In that regard, Subcontractor warrants to Contractor that:
  - 1.1.1 Subcontractor shall not engage in, allow, or countenance any activity prohibited by the Special Plea in Fraud Act (28 U.S.C. § 2514), the Contract Disputes Act of 1978 (41 U.S.C. §§ 7101-7109), or the False Claims Act (31 U.S.C. §§ 3729-3733). Subcontractor shall not practice any fraud in the proof, statement, establishment, or allowance of any claim; shall not engage in, allow, or countenance any misrepresentation of fact or fraud; shall not engage in, allow, or countenance any false or fraudulent claims for payment or approval; and shall not make or use any false record or statement to get a false or fraudulent claim paid or approved or to conceal or decrease an obligation to pay.
  - 1.1.2 All of Subcontractor's pay application/requisitions or other requests for payment and additional compensation shall be made in good faith, the supporting data will be accurate and complete, the amount requested will accurately reflect the amount to which Subcontractor is entitled, and Contractor shall have a right to rely upon the accuracy and completeness of all of Subcontractor's pay applications/ requisitions, other requests for payment and additional compensation.
  - 1.1.3 Subcontractor shall not engage in, allow, or countenance any activity prohibited by the Anti-Kickback Act of 1986 (41 U.S.C. §§ 8701-8708). Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations of the Anti-Kickback Act in its own operations and direct business relationships. When Subcontractor has reasonable grounds to believe that a violation of the Anti-Kickback Act may have occurred, Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to Contractor and to at least one of the following: the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice. Subcontractor shall cooperate fully with Contractor and with any federal agency investigating a possible violation of the Anti-Kickback Act. Such cooperation shall include, at a minimum,

providing reasonable access to all relevant documents. Subcontractor shall supply access to and copies of any documents supplied to any federal agency.

- 1.1.4 Subcontractor certifies that to the best of its knowledge it complies with the requirements set forth in FAR 52.203-11, Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions, that to the best of its knowledge and belief no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract, and that Subcontractor will include the language of this certification in all subcontracts, purchase orders, purchase agreements, etc., awards in excess of \$100,000 and require all recipients of such a subcontract, purchase order, purchase agreement, etc., to certify and disclose accordingly and to obtain the equivalent certification from lower tier subcontractors or suppliers with contracts or purchase orders in excess of \$100,000.
- 1.2 Subcontractor assumes all risks associated with the above representations and warranties, and regardless of the expense and difficulty of performing the Work, Subcontractor will fully complete the Work without further expense to Contractor or Owner.
- 2.0 PROHIBITION AGAINST DISCRIMINATION
- 2.1 **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-4.3(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit the discrimination against qualified individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.**
- 2.2 Executive Order 11246, 41 CFR § 60-4, and FAR 52.222-23 establish performance and reporting requirements for affirmative action goals. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade:	14.5%
Goals for female participation in each trade:	6.9%
- 2.3 If the Subcontract is in excess of \$100,000, Subcontractor shall prepare and submit Standard Form (SF) 1413, Statement and Acknowledgment, to Contractor which will forward the document to the U.S. Department of Labor. Subcontractor shall collect SF 1413s from its lower-tier subcontractors with subcontracts in excess of \$100,000.
- 2.4 Subcontractor shall flow these requirements down to subcontractors at all tiers.

### 3.0 DISPUTE RESOLUTION

Subcontractor acknowledges that the General Contract commits certain decisions and factual and legal determinations to the representative of the Owner designated the Contracting Officer including, but not limited to, decisions and/or determinations as to the quality of the work, the existence of differing site conditions, suspensions, or changes, and the appropriate compensation for any of the foregoing, or for any delay, impact or disruptions. Subcontractor agrees that any decisions and/or determinations of the Contracting Officer shall be as binding upon Subcontractor as upon Contractor. Subcontractor further agrees that any factual and legal determinations by any Court, Board of Contract Appeals or other administrative tribunal that are binding upon Contractor shall also be binding upon Subcontractor.

Subcontractor shall not be entitled to assert any claim that is inconsistent with any such binding decision or factual or legal determination and expressly consents to the dismissal of any lawsuit or proceeding asserting such claim, provided however, if such a suit or proceeding has been commenced and Contractor has commenced an appeal or other proceeding to challenge any such binding decision or determination, Subcontractor's lawsuit or proceeding may be stayed during the pendency, and until the completion of all appeals and proceedings challenging such decisions or determinations, as necessary to preserve Subcontractor's rights, if any, against the running of any applicable limitations period.

It is expressly understood that any right of Subcontractor to receive any payment under the Subcontract shall be co-extensive with Contractor's right to receive reimbursement for such payment under the General Contract, as determined in accordance with decisions and determinations that are binding upon Contractor, and Subcontractor expressly waives any claim to any payment in excess thereof or on a basis for payment different from the foregoing, including but not limited to any contrary rights arising under 40 USC § 270a and/or § 270b.

The parties recognize that problems and disputes between them may occur and that it is preferable for them to reach an amicable resolution of same without the need to resort to formal dispute resolution procedures. In the event of a dispute that can not be resolved through good faith negotiation, the parties shall participate in non-binding mediation pursuant to the Mediation Rules of the American Arbitration Association, which shall constitute a condition precedent to instituting legal action against each other or their sureties. Any dispute that cannot be resolved through mediation shall be submitted, in Contractor's sole option, to either (1) arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association or (2) judicial decision by the Superior Court of the State of Delaware, Kent County.

Furthermore, Subcontractor agrees that Contractor shall have the exclusive right to join Subcontractor as a party or to include any claim asserted by Subcontractor in any dispute resolution procedure (including without limitation ADR procedures, binding arbitration or other judicial or non-judicial proceeding) between the Owner and Contractor, together with such other subcontractors, parties or claims as may be appropriate, where in the



judgment of Contractor the issues in dispute are related to the work or performance of Subcontractor. Furthermore, Subcontractor expressly agrees to waive its right to trial by jury in case Contractor elects to resolve any dispute in litigation.

#### 4.0 PAYMENT

On or before the last day of each month Subcontractor shall submit to Contractor, in the form required by Contractor, a written requisition for payment showing the proportionate value of the Work installed to that date, from which shall be deducted: a reserve of Zero per cent (0%), reserving the right at any time point during the Project to withhold up to 10%; all previous payments; all amounts and claims against Subcontractor, by Contractor or any third party, for which Subcontractor is responsible hereunder; and all charges for services, materials, equipment and other items furnished by Contractor to or chargeable to Subcontractor. The balance of the amount of such requisition, as approved by Contractor and the Owner and for which payment has been received by Contractor from the Owner, shall be due and paid to Subcontractor, for satisfactory performance under the Subcontract not later than seven (7) days from receipt of payment by Contractor, out of such amounts as are paid to Contractor under the General Contract. Contractor shall pay to Subcontractor an interest penalty for each payment not made in accordance with this payment clause (i) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and (ii) computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. § 7109) in effect at the time Contractor accrues the obligation to pay an interest penalty. Subcontractor shall (i) include a prompt payment clause and an interest penalty clause conforming to the standards set forth in this clause in each of its subcontracts; and (ii) require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

The obligation of Contractor to make a payment under the Subcontract, whether a progress or final payment, or for extras or change orders or delays to the Work, is subject to the express condition precedent of payment therefor by the Owner. If Contractor has provided payment or performance bonds or a combination payment and performance bond, the obligation of Contractor and its Surety under any of those bonds to make any payment (whether a progress payment or final payment) to a claimant on that bond is similarly subject to the express condition precedent of payment therefor by the Owner.

Subcontractor shall submit on or before its first requisition for payment a detailed schedule showing the breakdown of the Price into its various parts for use only as a basis of checking Subcontractor's monthly requisitions.

Subcontractor agrees that, if and when requested to do so by Contractor, it shall furnish such information, evidence and substantiation as Contractor may require with respect to the nature and extent of all obligations incurred by Subcontractor for or in connection with the Work, all payments made by Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor.

## 5.0 NOTICES

A number of provisions in the Contract Documents, including, but not limited to the Changes Clause, the Differing Site Condition Clause, the Delay Clause and the Suspension of Work Clause require Contractor to notify Owner and to provide Owner with other information upon the occurrence of certain events. Subcontractor shall give notice and supply all documents necessary to allow Contractor to fully comply with all such provisions in the Contract Documents and waives any right to compensation or to extension of time for performance to the extent that any failure by Subcontractor impairs the Contractor's right to additional compensation or extension of time under the Contract.

## 6.0 CHANGE ORDER SUBMISSION AND CERTIFICATION

Any request by Subcontractor for a change in the price or time for performance shall be submitted in the form of a Change Order proposal. Subcontractor shall also submit a Change Order proposal upon request by Contractor. Subcontractor's Change Order proposal shall include a price breakdown, itemized as reasonably required by Contractor. Unless otherwise directed, the breakdown shall be in sufficient detail to permit analysis of all material, labor equipment, subcontract, and overhead costs, as well as profit, and shall cover all work and other costs (such as alleged delay, disruption or other impact) involved in the Change Order, whether such work was deleted, added or changed. Any amount claimed for sub-subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension request, a justification shall also be furnished.

Subcontractor shall submit its Change Order proposal with written certification stating:

- The claim (Change Order proposal) is made in good faith;
- Supporting data are accurate and complete; and
- The amount requested accurately reflects the Contract adjustment for which Subcontractor believes Contractor is liable.

## 7.0 COMPLIANCE

- 7.1 Subcontractor shall obtain and pay for all necessary permits and licenses pertaining to the Work and shall comply with all Federal, State, Municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including but not limited to those relating to safety, discrimination in employment, fair employment practices, immigration laws or equal employment opportunity, and whether or not provided for by the Plans, Specifications, General Conditions, or other Contract Documents, without additional charge or expense to Contractor and shall also be responsible for and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of its Work. Each requisition for payment shall constitute a representation and warranty that Subcontractor is in compliance with applicable law.

- 7.2 Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction of such violations. Subcontractor agrees to save harmless and indemnify Contractor from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by Subcontractor's failure to comply with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct such violations therefore resulting from or in connection with the performance of Work.
- 7.3 The Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire persons who are not authorized to work in the United States. For all employees, employers are required to complete an Employment Eligibility Verification form I-9 which requires the prospective employee to produce documentation that establishes identity and employment eligibility. For more information visit [www.uscis.gov](http://www.uscis.gov) or speak to your attorney. Each subcontractor is solely responsible for properly completing Employment Eligibility Verifications for their own employees.
- 7.4 Subcontractor acknowledges represents and warrants that Subcontractor is aware of and understands IRCA, that Subcontractor is in compliance with IRCA, and that Subcontractor is not knowingly employing workers who are not authorized to work in the United States. Subcontractor agrees that Subcontractor will not employ any worker under this Subcontract for whom Subcontractor has not completed and maintained I-9 verification. Subcontractor agrees that if Subcontractor acquires knowledge (constructive or otherwise, including receipt of a "no match" letter from Social Security Administration) indicating that one of Subcontractor's workers on this project may not be authorized to work in the United States, despite Subcontractor having conducted a facially valid I-9 verification, Subcontractor will exercise due diligence as required by law to confirm authorization status and take appropriate action which may include termination of employment. Subcontractor represents and warrants that it will not subcontract to or utilize labor sources that it knows or has reason to know violate IRCA.
- 7.5 Contractor has a longstanding reputation for honesty and integrity in its business dealings and for its corporate policies promoting lawful and ethical behavior. Contractor employees are prohibited from accepting bribes or kickbacks in any form. Therefore, if Subcontractor offers or provides a bribe or kickback to any employee, Subcontractor will be considered to be in material breach of this Subcontract. Subcontractor undertakes the commitment to advise Contractor of any action by any entity or person associated with the project that Subcontractor believes violates any applicable law, rule or regulation. Subcontractor's violation of any of the foregoing shall be considered as Subcontractor's failure to perform its obligations under the terms and conditions of the Subcontract. Such failure shall be considered adequate and justifiable grounds for Contractor to effectuate any and all rights and remedies under the provisions of the Subcontract.
- 7.6 Subcontractors, suppliers and vendors that have subcontracts, purchase orders or other contractual relationships with Contractor must conduct themselves with the highest degree of integrity and honesty.

- 7.7 FAR 52.203-13, Contractor Code of Business Ethics and Conduct shall apply to this Subcontract if the Price in the Subcontract exceeds \$5.5 Million and the period of performance exceeds 120 days. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, shall apply to the Subcontract if the Price exceeds \$150,000. As may be reasonably requested by Contractor, Subcontractor shall provide Contractor with information and documentation sufficient for Contractor to determine whether Subcontractor has in existence a compliance program that meets the requirements of FAR 52.230-13 and FAR 52.230-17. Contractor is not required to and shall not render an opinion as to whether Subcontractor's compliance program is adequate. Contractor's receipt and review of the information and documentation furnished by Subcontractor hereunder shall not be deemed or construed as acceptance or approval by Contractor of Subcontractor's compliance program. Subcontractor is solely responsible for meeting the requirements of FAR 52.203-13 and FAR 52.203-17.
- 7.8 Upon written notice to Subcontractor, Contractor may, at its sole discretion, require Subcontractor's project management and/or site personnel involved with the Subcontract to attend at Subcontractor's own expense, education and training programs relating to ethics and compliance that may be conducted from time to time by Contractor or its representatives.
- 7.9 In addition to any other remedies provided by law or under the Subcontract, Subcontractor agrees to indemnify and save harmless Contractor to the fullest extent of any loss, damage or expense if Contractor is subjected to any liability as a result of the failure of Subcontractor to comply with clauses 7.7 and 7.8 of this Subcontract Addendum or the requirements of FAR 52.203-13 and FAR 52.203-17.
- 7.10 In regard to matters of compliance, Subcontractor specifically acknowledges and agrees:
- 1) Contractor has been informed by the Owner that the Project and the General Contract are subject to Federal Prevailing Wage provisions under the Davis-Bacon Act. Subcontractor shall comply with any applicable Prevailing Wage provisions and shall maintain such records as would be needed to establish the amount of wages and other compensation paid to workers on the Project and shall submit to Contractor, as a condition for payment, certified payrolls in the form prescribed by regulations applicable to the Davis-Bacon Act and the Contract.
  - 2) It is anticipated that Subcontractor's Work shall not be exempt from state, county, municipal or other local taxation. Subcontractor agrees to pay all taxes applicable to its work without increase in the Contract Sum. The Price will be appropriately decreased in the event any portion of Subcontractor's Work is exempt from taxation.

#### 8.0 SMALL BUSINESS SUBCONTRACTING PLAN

The General Contract incorporates Contractor's Subcontracting Plan, which has been made available by Contractor to Subcontractor. Consistent therewith, this Subcontract incorporates FAR 52.219-8, Utilization of Small Business Concerns, and FAR 52.219-9,



Small Business Subcontracting Plan. If Subcontractor is not a small business concern and if this Subcontract exceeds \$1.5 million (\$700,000 for a non-construction subcontract), Subcontractor shall submit an acceptable Small Business Subcontracting Plan in accordance with FAR 52.219-9 as a condition to award and/or payment under this Subcontract. Subcontractor's Small Business Subcontracting Plan shall meet the requirements of FAR 19.704 and FAR 52.219-9, and shall require Subcontractor to make good faith efforts to meet or exceed the following goals:

Small Business	24%
Woman-Owned Small Business	5%
HUBZone Small Business	1%
Veteran-Owned Small Business	0.5%
Service-Disabled Veteran-Owned Small Business	0.5%

Subcontractor shall comply fully with its accepted Small Business Subcontracting Plan, including with any related regulations, record-keeping and reporting requirements and shall provide any documentation and assistance reasonably requested by Contractor related to Contractor's Subcontracting Plan.

#### 9.0 DOMESTIC PREFERENCES

The Contract Documents and this Agreement/Purchase Contract are subject to domestic preference requirements that restrict the country of origin of construction materials supplied by Subcontractor that are to be incorporated into the Project including, but not limited to, the Buy American Act. Subcontractor acknowledges, represents, and warrants that all articles, construction materials, and supplies to be supplied by Subcontractor and its lower tier subcontractors and suppliers for use on the Project shall comply with the domestic preferences required by statute and contained, or not, in the Contract Documents.

#### 10.0 INCORPORATION OF REQUIRED PROVISIONS

Subcontractor is subject to Federal Acquisition Regulation ("FAR") and the Department of Defense Federal Acquisition Regulation Supplement ("DFARS") clauses (hereinafter collectively referred to as "FAR clauses") listed below. In all FAR clauses incorporated by reference or in full text below, the terms shall be revised to appropriately identify the contracting parties and to effectuate the intent of such provisions. "Government" and/or "Contracting Officer" shall generally refer to "Contractor", and all references to "contractor", "offeror", and the "contract" shall generally refer to the Subcontractor and the Subcontract. In the event of a conflict between the referenced FAR clauses and the Subcontract or any additional provisions, attachments, exhibits, or riders thereto, the provision that imposes the greater obligation or liability shall control.

The FAR clauses apply to Subcontract as required by the terms of the Contract or by operation of law or applicable regulations. The effective version of each referenced FAR clause shall be the version of that clause appearing in the Contract. To the extent that this Subcontract Attachment does not specifically identify a FAR clause that has mandatory

application to the Subcontract, Subcontractor is not relieved of its contractual and legal obligations to fully comply with such clause. If additional mandatory FAR clauses become applicable to the Subcontract after the effective date hereof, they shall be deemed incorporated into the Subcontract by operation of law. In addition, Subcontractor understands and agrees that Contractor may incorporate such additional FAR clauses as may be necessary for the performance of the Work, upon reasonable notice to Subcontractor. Subcontractor agrees to flow down all applicable FAR clauses to its lower tier subcontractors and suppliers.

Subcontractor agrees that (1) Subcontractor shall perform all acts necessary to assist and allow Contractor to comply with its obligations under such clauses and provisions; (2) Subcontractor will refrain from any act that would cause Subcontractor or Contractor to be in violation of any such clause, provision or any other applicable law or regulation; (3) any provisions or obligations required by the General Contract to be included in the Subcontract are deemed to be included herein; (4) Subcontractor shall perform the work and its other obligations under the Subcontract in compliance with the foregoing clauses, provisions and any other applicable law or regulation; (5) Subcontractor shall provide to Contractor a copy of any notification or other document sent or provided to the Owner or any other person in compliance with any of the foregoing provisions; and (6) Subcontractor shall include a provision equivalent to this provision in any and all subcontracts entered into by Subcontractor.

It is the intent of both Subcontractor and Contractor that the price, all costs, and any fee to be paid under this Subcontract are reasonable within the meaning of the Federal Acquisition Regulation. In no event shall Contractor be liable to Subcontractor for any sum in excess of the amount determined to be reimbursable to Contractor from the Owner for Subcontractor's work in accordance with applicable regulations, including, but not limited to, subparts 31.2 and 15.4 of the Federal Acquisition Regulation. If any sum paid to Subcontractor is determined not to be reimbursable to Contractor, Subcontractor shall promptly repay said sum to Contractor.

#### **Part 1: Clauses Incorporated by Reference**

The following clauses set forth in the Federal Acquisition Regulation (FAR) and the Department of Defense Federal Acquisition Regulation Supplement (DFARS) are hereby incorporated by reference into the Subcontract with the same force and effect as if set forth in full text herein. The full text of the FAR and DFARS clauses can be accessed electronically at <http://www.acquisition.gov>. Under no circumstances shall the Subcontractor raise as a claim or defense its failure to be aware of the application of, or understand its obligations to comply with, the requirements of the FAR or DFARS contract clauses.

<b>FAR</b>	<b>TITLE</b>	<b>DATE</b>
52.202-1	Definitions	NOV 2013
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	MAY 2014

52.203-6	Restrictions On Subcontractor Sales to the Government	SEP 2006
52.203-7	Anti-Kickback Procedures	MAY 2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	MAY 2014
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	MAY 2014
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	OCT 2010
52.203-13	Contractor Code of Business Ethics and Conduct	OCT 2015
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	APR 2014
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	MAY 2011
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	OCT 2016
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	OCT 2015
52.211-13	Time Extensions	SEP 2000
52.215-2	Audit and Records—Negotiation	OCT 2010
52.215-12	Subcontractor Certified Cost or Pricing Data	OCT 2010
52.215-13	Subcontractor Certified Cost or Pricing Data— Modifications	OCT 2010
52.215-19	Notification of Ownership Changes	OCT 1997
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications	OCT 2010
52.219-8	Utilization of Small Business Concerns	OCT 2014
52.219-9	Small Business Subcontracting Plan (OCT 2015)	
52.219-16	Liquidated Damages – Subcontracting Plan	JAN 1999
52.222-1	Notice To The Government Of Labor Disputes	FEB 1997
52.222-3	Convict Labor	JUN 2003
52.222-4	Contract Work Hours and Safety Standards- Overtime Compensation	MAY 2014
52.222-5	Construction Wage Rate Requirements – Secondary Site of the Work	MAY 2014
52.222-6	Construction Wage Rate Requirements	MAY 2014
52.222-7	Withholding of Funds	MAY 2014
52.222-8	Payrolls and Basic Records	MAY 2014
52.222-9	Apprentices and Trainees	JUL 2005
52.222-10	Compliance with Copeland Act Requirements	FEB 1988
52.222-11	Subcontracts (Labor Standards)	MAY 2014
52.222-12	Contract Termination-Debarment	MAY 2014
52.222-13	Compliance With Construction Wage Rate Requirements and Related Regulations	MAY 2014
52.222-14	Disputes Concerning Labor Standards	FEB 1988

52.222-15	Certification of Eligibility	MAY 2014
52.222-21	Prohibition Of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-27	Affirmative Action Compliance Requirements for Construction	APR 2015
52.222-35	Equal Opportunity for Veterans	OCT 2015
52.222-36	Equal Opportunity for Workers with Disabilities	JUL 2014
52.222-37	Employment Reports on Veterans	FEB 2016
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-50	Combating Trafficking in Persons	MAR 2015
52.222-54	Employment Eligibility Verification	OCT 2015
52.222-55	Minimum Wages Under Executive Order 13658	DEC 2015
52.223-6	Drug-Free Workplace	MAY 2001
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving	AUG 2011
52.225-11	Buy American – Construction Materials Under Trade Agreements	OCT 2016
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.227-1	Authorization and Consent	DEC 2007
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	DEC 2007
52.227-4	Patent Indemnity-Construction Contracts	DEC 2007
52.228-5	Insurance - Work On A Government Installation	JAN 1997
52.229-3	Federal, State And Local Taxes	FEB 2013
52.232-27	Prompt Payment for Construction Contracts	JAN 2017
52.232-39	Unenforceability of Unauthorized Obligations	JUN 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	DEC 2013
52.233-1	Disputes	MAY 2014
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-5	Material and Workmanship	APR 1984
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984
52.236-13	Accident Prevention	NOV 1991
52.236-15	Schedules for Construction Contracts	APR 1984
52.236-16	Quantity Surveys	APR 1984
52.236-17	Layout of Work	APR 1984



52.236-21	Specifications and Drawings for Construction	FEB 1997
52.242-14	Suspension of Work	APR 1984
52.243-4	Changes	JUN 2007
52.244-6	Subcontracts for Commercial Items	JAN 2017
52.246-12	Inspection of Construction	AUG 1996
52.246-21	Warranty of Construction	MAR 1994
52.248-3	Value Engineering-Construction	OCT 2015
52.253-1	Computer Generated Forms	JAN 1991
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DEC 2008
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	SEP 2013
252.204-7000	Disclosure Of Information	OCT 2016
252.204-7006	Billing Instructions	OCT 2005
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting.	OCT 2016
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Country that is a State Sponsor Of Terrorism	OCT 2015
252.215-7000	Pricing Adjustments	DEC 2012
252.219-7003	Small Business Subcontracting Plan (DOD Contracts) - Basic	MAR 2016
252.223-7004	Drug Free Work Force	SEP 1988
252.223-7006	Prohibition On Storage, Treatment, and Disposal of Toxic or Hazardous Materials	SEP 2014
252.225-7012	Preference For Certain Domestic Commodities	DEC 2016
252.225-7048	Export-Controlled Items	JUN 2013
252.227-7022	Government Rights (Unlimited)	MAR 1979
252.227-7023	Drawings and Other Data to become Property of Government	MAR 1979
252.227-7027	Deferred Ordering Of Technical Data or Computer Software	APR 1988
252.227-7033	Rights in Shop Drawings	APR 1966
252.231-7000	Supplemental Cost Principles	DEC 1991
252.236-7000	Modification Proposals-Price Breakdown	DEC 1991
252.236-7001	Contract Drawings and Specifications	AUG 2000
252.236-7002	Obstruction of Navigable Waterways	DEC 1991
252.243-7001	Pricing Of Contract Modifications	DEC 1991
252.243-7002	Requests for Equitable Adjustment	DEC 2012
252.244-7000	Subcontracts for Commercial Items	JUN 2013
252.247-7023	Transportation of Supplies by Sea	APR 2014
252.247-7024	Notification Of Transportation Of Supplies By Sea	MAR 2000

**Part 2: Clauses Incorporated by Full or Substantive Text**

52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)

(a) If the Subcontractor fails to complete the work within the time specified in the contract, the Subcontractor shall pay liquidated damages to Dobco in the amount of \$2,000.00 for each calendar day of delay until the work is completed or accepted.

(b) If Dobco terminates the Subcontractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

At a time before the project is physically complete, but is functionally complete to the satisfaction of Dobco, Dobco at its sole discretion may agree to accept transfer of the facility or project provided that the remaining work to be done ("punchlist") is completed no later than 30 days from the date of transfer. In this case the Subcontractor shall pay liquidated damages for punchlist items not completed in the daily amount of **\$1,120** per day commencing after 30 days of project transfer or after date required for project completion (including all extensions), whichever occurs later

(End of clause)

#### 252.236-7001 CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
NA	NA	NA

(End of clause)

SUBCONTRACTOR:

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Office and Title)

\_\_\_\_\_  
(Date)

SEAL:

WITNESSED: \_\_\_\_\_

BY: \_\_\_\_\_

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
NA	NA	NA

(End of clause)

SUBCONTRACTOR:

Rolph G. Degli Obizzi & Sons  
(Name of Company)

Anthony S. Degli Obizzi  
(Signature)

Vice President  
(Name of Office and Title)

07-08-19  
(Date)

SEAL:

WITNESSED: M. Nacchia

BY: Mariann Nacchia



<b>REPRESENTATIONS AND CERTIFICATIONS SUBMITTED WITH OFFER</b>	<b>Project:</b>  Welch Elementary School / Dover Air Base Middle School Replacement, Dover Air Force Base, Delaware
<b>Name and Address of Subcontractor (Name, Street, City, State and Zip Code)</b> Ralph G. Degli Obizzi & Sons INC. 400 Robinson Lane Wilmington, Delaware 19805	<b>Date of Offer :</b> 06 - 18 - 2019

In submitting an offer, proposal, or quote, each subcontractor, unless exempted by the terms of the clauses, must execute the following representations and certifications and check the appropriate boxes and fill in the blanks. In all cases, "offeror" refers to Subcontractor.

### 1. Small Business Representations

By checking the appropriate box(es), Subcontractor hereby represents its size based on the applicable North American Industrial Classification System ("NAICS") code for the type of work being performed by Subcontractor.

- ☐ Small Business
- ☐ Service-Disabled Veteran-Owned Small Business ("SDVOSB")
- ☐ HUBZone Small Business (HUBZ)
- ☐ Small Disadvantaged Business ("SDB")
- ☐ Woman-Owned Small Business ("WOSB")
- ☐ Veteran-Owned Small Business ("VOSB")
- ☐ Large Business

Enter the applicable 6 character NAICS Code: \_\_\_\_\_

### 2. FAR 52.203-11, Certification and Disclosure Regarding Limitation on Payments to Influence Certain Federal Transactions, and FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions

By executing the Subcontract, Subcontractor hereby certifies to the best of its knowledge and belief that:

1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the award of the Agreement/Purchase Contract or the General Contract between Contractor and the Government.

2) It is not required to complete and submit to Contractor and the Contracting Officer an

OMB Standard Form LLL, Disclosure of Lobbying Activities because no registrant under the Lobbying Disclosure Act of 1995 has made a lobbying contact on behalf of Subcontractor with respect to the Agreement/Purchase Contract or the General Contract between Contractor and the Government; OR it has completed submitted the required OMB Standard Form LLL, Disclosure of Lobbying Activities to Contractor and the Contracting Officer.

3) If a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), Subcontractor, within 20 days from the end of the calendar quarter in which the change occurs, will submit to Contractor and the Contracting Officer an updated disclosure using OMB Standard Form LLL.

4) It will obtain from its lower-tier subcontractors and suppliers a declaration, certification, and disclosure as required by the Certification Regarding Limitation on Payments to Influence Certain Federal Transactions clause, FAR 52.203-11, and the Limitation on Payments to Influence Certain Federal Transactions clause, FAR 52.203-12.

### **3. FAR 52.204-10, Reporting Executive Compensation and First Tier Subcontract Awards**

The Executive Compensation and First Tier Subcontracts Awards clause requires Contractor to report the names and total compensation of each of Subcontractor's five most highly compensated executives for Subcontractor's preceding completed fiscal year if Subcontractor received: (1) 80% or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; AND (2) \$25 million or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; AND (3) the public does not have access to information about Subcontractor's executive compensation through periodic reports filed under § 13(a) or § 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. Subcontractor understands that this information will be reported at <http://www.fsrs.gov>, and that this information will be made public.

By checking the appropriate box and providing the data required (if applicable), Subcontractor certifies that:

- ☐ Subcontractor does not meet the requirements for reporting executive compensation as set forth in FAR 52.204-10;

OR

- ☐ Subcontractor meets the requirements for reporting executive compensation and the information provided below on Subcontractor's five most highly compensated executives is accurate. Subcontractor agrees to provide updated executive compensation information if there are changes to the information provided during the performance of the Agreement.

## Names and Compensation of Subcontractor's Five Most Highly Compensated Executives

Name	Total Compensation
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**4. FAR 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment**

By executing the Subcontract, Subcontractor hereby certifies to Contractor that Subcontractor and its principals are not debarred, suspended, or proposed for debarment by the Federal Government.

**5. FAR 52.222-15, Certification of Eligibility**

By executing this Agreement/Purchase Contract, Subcontractor hereby certifies that neither it nor any person or firm who has an interest in the Subcontractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

**6. FAR 52.222-22, Previous Contracts and Compliance Reports (Feb 1999)**

The Subcontractor represents that—

- (a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and
- (b) It ☐ has, ☐ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed lower-tier subcontractors, will be obtained before subcontract awards.

**7. FAR 52.225-13, Restrictions on Certain Foreign Purchases**

By executing the Subcontract, Subcontractor hereby certifies that it complies with FAR 52.225-13, Restrictions on Certain Foreign Purchases and that, except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this Subcontract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

**8. DFARS 252.209-7004, Subcontracting with Firms that Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism**

By executing this Agreement/Purchase Contract, Subcontractor certifies that it is not a firm, or a subsidiary of a firm, that is identified in the System for Award Management Exclusions as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.

SUBCONTRACTOR:

Ralph G. Degli Obizzi & Sons Inc.  
(Name of Company)

Anthony J. Degli Obizzi  
(Signature)

Vice President  
(Name of Office and Title)

07-08-2019  
(Date)

SEAL:

WITNESSED: Mariann Nacchia

BY: Mariann Nacchia



**STATEMENT AND ACKNOWLEDGMENT**


OMB Control Number: 9000-0066

Expiration Date: 4/30/2022

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0066. We estimate that it will take .05 hours to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: U.S. General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

**PART I - STATEMENT OF PRIME CONTRACTOR**

1. PRIME CONTRACT NUMBER W912BU-19-C-0017		2. DATE SUBCONTRACT AWARDED 2019-02-27		3. SUBCONTRACT NUMBER	
4. PRIME CONTRACTOR				5. SUBCONTRACTOR	
a. NAME Dobco Inc				a. NAME Ralph G Degli Obizzi & Sons	
b. STREET ADDRESS 1 Geoffrey Way				b. STREET ADDRESS 400 Robinson Lane	
c. CITY Wayne	d. STATE NJ	e. ZIP CODE 07470	c. CITY Wilmington	d. STATE DE	e. ZIP CODE 19805
6. The prime contract <input checked="" type="checkbox"/> does, <input type="checkbox"/> does not contain the clause entitled "Contract Work Hours and Safety Standards Act -- Overtime Compensation."					
7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:					
a. NAME OF AWARDFIRM Department of the Army, Philadelphia District, Corps of Engineers					
b. DESCRIPTION OF WORK BY SUBCONTRACTOR HVAC Scope of work					

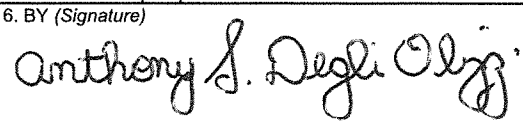
8. PROJECT Welch Elementary School/ Dover Air Base Middle School Replacement		9. LOCATION Dover Air Force Base, Dover, Delaware	
10a. NAME OF PERSON SIGNING Theresa Romeo	11. BY (Signature) 		12. DATE SIGNED 7-12-2019
10b. TITLE OF PERSON SIGNING Contracts Administrator			

**PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR**

13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

Contract Work Hours and Safety Standards Act - Overtime Compensation (If included in prime contract see Block 6)	Construction Wage Rate Requirements
Payrolls and Basic Records	Apprentices and Trainees
Withholding of Funds	Compliance with Copeland Act Requirements
Disputes Concerning Labor Standards	Subcontracts (Labor Standards)
Compliance with Construction Wage Rate Requirements and Related Regulations	Contract Termination - Debarment
	Certification of Eligibility

## 14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

A	Ducts Unlimited- Ducts Scope of Work - WOSB \$846,000.00	C	
B	Eastern Industrial - Insulation scope of work	D	
15a. NAME OF PERSON SIGNING Anthony S. Degli Obizzi		16. BY (Signature) 	
15b. TITLE OF PERSON SIGNING Vice President		17. DATE SIGNED 07-08-19	